

The Task Force Report identifies three models of spectrum usage: the “exclusive use” model (typical of spectrum auctioned within geographic areas), the “commons” model (typical of unlicensed spectrum use), and the “command-and-control model” (the traditional method of allocating spectrum for specific uses by regulation). While the Task Force Report recommends that the Commission move towards the exclusive use and commons models in its allocation decisions, the Report recognizes that public safety communications should continue to be subject to the command-and-control model. APCO strongly supports that assessment.

Public safety agencies require reliable, immediate, and unfettered access to radio communications on a day-to-day basis to fulfill their obligation to protect the safety of life, health and property. They cannot tolerate interference from other spectrum users, and demand the highest possible level of reliability and coverage. Furthermore, unlike many other spectrum users, public safety agencies’ need for radio spectrum is driven by the public interest, not the marketplace factors that drive the “exclusive use” and “commons” models. Therefore, as discussed in the Task Force Report, public safety spectrum must continue to be assigned pursuant to the command-and-control model.

APCO is concerned, however, that the Task Force only suggests that spectrum “currently set aside for public safety use remain subject to the command-and-control model.” Public safety spectrum needs are not static. To the contrary, as documented in the 1996 Report of the Public Safety Wireless Advisory Committee, public safety users will continue to require additional spectrum to keep pace with the demands placed on law enforcement, fire, emergency medical and other public safety services. Since September 11, 2001, those demands have only increased. While there have been some important

and significant allocations of public safety spectrum since the PSWAC Report, much of that new spectrum is unusable in the most populous areas of the country, pending completion of the digital television transition. Additional allocations will be needed, and those allocations should be pursuant to the command-and-control model, for the very same reasons that the model must continue to apply to existing allocations.

The Task Force also suggests that public safety users should have the flexibility to lease portions of their spectrum capacity during “down times,” while maintaining a “take-back” mechanism for times when public safety needs increase. While this approach may have some theoretical appeal, it would face major technical, legal, and practical impediments.

First, it is an oversimplification to assume that all public safety systems operate with peaks and valleys of use. For many agencies, radio use is nearly constant, with only rare periods of relative “quiet.” Especially in large metropolitan areas, spectrum capacity is scarce, while demands by users are growing constantly. The increased use of data communications by public safety agencies is also placing new demands on existing networks. Just as telephone line capacity became a major issue with use of the Internet, so too has public safety radio capacity become an issue as data transmission becomes an increasingly important part of public safety communications. Thus, the potential for leasing public safety spectrum capacity is probably much less than the Task Force may perceive.

Second, many state and local governments lack the legal authority to engage in the sort of commercial activity contemplated by the Task Force. Legal authority of this nature varies greatly from state to state, and within states. Third, the technical capability

to shut down a spectrum lessee is still far from being fully developed and tested. That technology will need to be proven effective in other contexts, since public safety personnel should not, and cannot, be the guinea pigs. Until then, leasing excess capacity will remain no more than a theoretical possibility.

Finally, who are the potential spectrum lessees who would be willing to operate on public safety channels with the risk that their communications could be shut down at any time without warning, and perhaps remaining shut down over extended periods of time for a major emergency? Who would tolerate daily, unpredictable service interruptions? What would such users be willing to pay for unpredictable service? Would that payment be adequate to offset the cost of the necessary technology, and would it be sufficiently meaningful to create the marketplace incentives desired by the Task Force? These and other issues would have to be resolved before the theory of public safety spectrum leasing could even begin to be contemplated as a reality.

The Task Force also briefly raises the need for “priority access” to commercial radio systems in times of major emergency. APCO agrees that such access could be an important communications tool in coordinating emergency response activities. However, priority access is unlikely to benefit the “first responders” who need unfettered communications capability during and in the immediate aftermath of an emergency. They cannot wait for approval to pre-empt commercial systems or to implement complex priority access protocols. Nor should they be dependent upon commercial systems that may provide little or no coverage at the location of an emergency. Thus, priority access is not a substitute for sufficient public safety spectrum assigned through a “command-and-control” model.

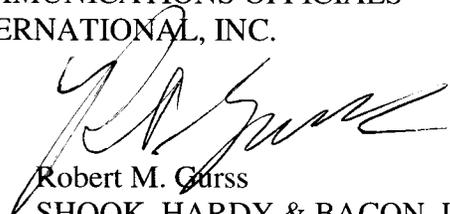
CONCLUSION

The Spectrum Task Force has taken on some difficult issues, and developed potentially useful guidance for future Commission actions regarding spectrum allocation and management. However, as the Commission proceeds in that regard, it must continue to recognize the unique nature of public safety communications, and be faithful to its statutory obligation to manage the radio spectrum in a manner that promotes the protection of life, health and property.

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